IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1312 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARDESH KUMAR RAJARAM C/O JB RAJYAGURU

Versus

KV B UNNI DESK OFFICER

Appearance:

MR PH PATHAK for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR BIPIN I MEHTA for Respondent No. 2 and 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/05/2000

ORAL JUDGEMENT

Learned advocate Mr. P.H. Pathak is appearing on behalf of the petitioner. Learned advocate Mr. M.R. Shah is appearing on behalf of Respondent No.1 and

learned advocate Mr. Bipin Mehta is appearing on behalf of Respondent No.2 and 3.

2. In the present petition, the petitioner has challenged the order passed by Desk Officer dated 16.04.1998 under Section 12, Sub-Clause (5) of the ID Act, 1947. The petitioner has challenged the termination order by way of raising industrial dispute under the provisions of ID Act, 1947. The challenge of the petitioner is that the termination order is violating Section 25F, 25G and 25H of the ID Act. On the basis of the dispute raised by the petitioner, conciliation proceedings were initiated and ultimately a Failure Report was submitted by the Conciliation Officer dated 25.02.1998 and after receiving the same from the Conciliation Officer, the Ministry of Labour has examined the said dispute on 16.04.1998 and come to the conclusion that the Ministry does not consider this dispute fit for the following reasons. The reasons given by the Ministry are that it is found that the workman has not put in more than 240 days of service during the 12 months period prior to his alleged termination and as such cannot claim any protection under the ID Act, 1947. The petitioner has also requested to the Assistant Labour Commissioner, Adipur by an application for reconsideration dated 21.11.1998 wherein the certificate of completion of more than 240 days during 12 months in service was produced before the Assistant Labour Commissioner (Central), Adipur. However, the case of the petitioner has not been considered after the decision dated 16.04.1998. Therefore, the present petition has been filed by the petitioner. In the present petition, Rule was made returnable on 22.03.2000 and in response to the Rule, affidavit-in-reply has been filed by the Respondent No.3. In the reply, it was pointed out by the Respondent No.3 that the service of the petitioner has not been terminated but he left the work in January, 1991 on his own and even without intimation to the competent authority. According to the Respondent No.3, in the year 1990-91, the workman concerned has completed only 105 days service and therefore, the decision which has been taken by the Ministry of Labour is legal and valid which does not require any interference.

3. Learned advocate Mr. Pathak submitted that the appropriate Government had no power to adjudicate the industrial dispute which has been raised by the petitioner. The decision that the petitioner has not completed 240 days' continuous service during the 12 months period is a decision on merit which is required to be examined by the Labour Court or the Industrial

Tribunal after the reference has been made to the appropriate court. Therefore, according to Mr. Pathak the said decision is beyond the scope and power of Section 10 of the ID Act and therefore, the authority has committed gross error in deciding the industrial dispute while coming to the conclusion whether industrial dispute exists or not. Such decision on merits is unwarranted in law. He relied upon the decision of the Apex Court in the case of TELCO CONVOY DRIVERS MAZDOOR SANGH & ORS. vs. State of Bihar and others reported in AIR 1989 SC Page 1565. The Apex Court has observed that while exercising powers under Section 10 Sub-clause (1), the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function and that in performing this administrative function, the Government cannot delve into the merits of the dispute and take upon itself, the determination of dispute, which would certainly be in excess of the powers conferred on it by Section 10. It is true that in considering the question of making a reference under Section 10 Sub-clause (1), the Government is entitled to form an opinion as to whether an industrial dispute exists or is apprehended. But the formation of opinion as to whether an industrial dispute exists or is apprehended is not the same thing as to adjudicate the dispute itself on its merits.

4. Learned advocate Mr. M.R. Shah appearing on behalf of Respondent No.1 and learned advocate Mr. Bipin Mehta appearing on behalf of Respondent No.2 and 3 have relied upon the decision of the Apex Court in the case of Nedungadi Bank Limited vs. K.P. Madhavankutty and others Reported in 2000 (1) SLR Page 636. In the said decision, the Apex Court has considered the question of limitation and the ultimate decision was that after the lapse of 7 years from the order of dismissal of the service of the respondent, there is no rational basis to refer the matter for adjudication to the concerned appropriate court. A dispute which is stale could not be a subject matter of reference under Section 10 of the Act. Mr. Shah submitted that in the present case also, after the termination in the year 1991, an industrial dispute has been raised by the petitioner workman after a period of 7 years and therefore considering the decision of the Apex Court, he submitted that such dispute cannot be referred for adjudication and whenever a workman raises some dispute, it does not become an industrial dispute and the appropriate Government cannot in a mechanical fashion make the reference of alleged dispute terming as industrial dispute. The Central Government lacked power to make reference both on the ground of

delay in invoking the powers under Section 10 of the Act and there being no industrial dispute existing or even apprehended. He also relied upon another decision of the Apex Court in the case of Secretary, Indian Tea Association vs. Ajit Kumar Barat and others reported in 2000 (1) SCALE Page 515. In the said decision, the Apex Court has observed that the appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made, it is desirable, whereever possible, for the Government to indicate the nature of dispute in the order of reference. Before making a reference under Section 10 of the Act, the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

5. Mr. Pathak appearing on behalf of the petitioners has relied upon the decision of the Apex Court reported in 1999 (2) SCALE Page 508 in the case of Ajayab Singh. In the said decision, the Apex Court has observed that the applicability of Limitation Act to prosecute under Industrial Disputes Act cannot be applicable and that the relief under it cannot be denied to the workman merely on the ground of delay. No reference to the Labour Court can generally be questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or the Board dealing with the case can appropriately cut the relief by declining to grant backwages to the workman till the date he raised demand regarding his illegal termination or retrenchment or dismissal. The object of the Act, therefore, is to give succour to weaker sections of the society which is a pre-requisite for the welfare State to ensure industrial peace and prevent industrial tension. The Act further aims at enhancing the industrial production which is acknowledged to be the life blood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities which are due to avoid delays of authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of the society keeping in view the vast changing social norms of the developing country like India. Similarly, in the case of Mahavir Singh vs. U.P. State Electricity Board reported in 1999 (2) CLR Page 7, the same question has been examined by the Apex Court and it

was observed that after a delay of 9 years, reference can be made and the same cannot be denied merely on the ground of delay and merely delay does not cease the dispute but taking care at the time of granting the relief to the concerned workman. Therefore, Mr. Pathak submitted that from both the contentions which has been raised by the advocate of the respondents, there is a clear answer by the decision of Apex Court in the case of Ajayab Singh and in the case of Mahavir Singh.

6. I have considered the submission of both the learned advocates and also the decisions cited by both the learned advocates. The facts of the present case are that the order dated 16.04.1998 under Section 12 Sub-clause (5) of the ID Act has been challenged wherein the reason given by the Ministry of Labour for not referring the matter for adjudication while exercising the powers under Section 10 Sub-clause (1) of the ID Act, 1947 was that the petitioner workman has not put more than 240 days of continuous service during the 12 months period which is a clear conclusion on merits and not having any prima facie opinion to the subject matter of the dispute. Whether the workman has completed 240 days continuous service or not is a question of fact requiring oral and documentary evidence and to be proved by the workman concerned before the Labour Court. The petitioner workman by letter dated 21.11.1998 which has been addressed to ALC (Central), Adipur wherein the certificate to the effect that the petitioner has completed more than 240 days during 12 months in his service has been produced by the Union in application for reconsideration of the decision dated 16.04.1998. Therefore, on such decisions on merit the appropriate Government have no power to examine the facts and to decide the same while exercising the powers under Section 10 of the ID Act. Therefore, in the decision of TELCO case which has been cited by Mr. Pathak and even in the case of Secretary, Indian Tea Association, the Apex Court in terms observed that the appropriate Government making a reference is an administrative order and not a judicial or quasi-judicial one. Therefore, if the order of appropriate Government is considered to be an administrative order then the appropriate Government should not decide the lis between the parties which converts the administrative order into quasi-judicial or judicial order and which is beyond the function of the appropriate Government while exercising the powers under Section 10 of the ID Act, 1947. Therefore, according to my opinion after considering all the decisions of Apex Court, the delay cannot come in the way for raising the dispute, which part of delay can be taken care of by the

court at the time of granting the relief and merely because of delay, the dispute cannot cease and therefore the contention raised by the learned advocates Mr. Shah and Mr. Mehta cannot be accepted. Similarly, the decision which has been taken by the appropriate Government apparently is on merits deciding the dispute itself and therefore it is beyond the scope of the appropriate Government. It is not the prima facie opinion but it is a proved and final opinion given by the appropriate Government which is beyond the scope of Section 10 of the ID Act. The petitioner has challenged the termination order not only on the ground of Section 25F but also on the ground of violating Section 25G and 25H. For having the benefit under Section 25G and 25H, it is not necessary to complete 240 days' continuous service as held by the Apex Court in case of Central Bank of India wherein it is observed by the Apex Court that Sections 25G and 25H both are independent Sections and a workman can get the benefit of both the Sections irrespective of the fact that whether he has completed 240 days' continuous service within a period of 12 months or not. The appropriate Government has also not considered the said two independent provisions of Section 25G and 25H of the ID Act and therefore apparently the appropriate Government has committed gross error in not referring the matter for adjudication to the appropriate Labour Court or the Industrial Tribunal. Therefore, the order passed by Respondent No.1 dated 16.04.1998 Annexure A Page 8 of the petition is required to be set aside.

7. When the order in question has been set aside, the question whether this court can issue a writ of mandamus against the appropriate Government to make the reference or not has been examined by the Apex Court in case of TELCO (supra) wherein the Apex Court has observed that it has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion whereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and as the Government has persistently declined to make a Reference under Section 10 of the Act therefore, we should direct the Government to make such Reference. In several instances, this Court had to direct the Government to make a reference under Section 10 or 12. When the Government had declined to make such a reference and this court was of the view that such a reference should have been made, considering the decisions reported in 1983 (1)

Labour Law Journal Page 460, AIR 1985 SC Page 915, AIR 1985 SC Page 860 and AIR 1984 SC Page 1619 and in the case of Abad Dairy reported in 1993 (3) LLJ (Supplement) Page 1993 and also the above decisions and in view of the present facts on hand, when termination of the petitioner workman in the year 1991 wherein he completed 240 days' continuous service as per the certificates by Union in letter dated 21.11.1998 more than 10 years have passed and therefore, it is not desirable to direct the appropriate Government to reconsider the case but considering the delay of about 10 years and considering the observations made by the Apex Court in the above cited case, I am of the view that if it is directed to the appropriate Government Respondent No.1 to make a reference to the appropriate Labour Court or Industrial Tribunal, it will meet the ends of justice.

8. Therefore, in view of the fact the order passed by Respondent No.1 dated 16.04.1998 is hereby quashed and set aside and it is directed to the Respondent No.1 to refer the industrial dispute which has been raised by the petitioner wherein ultimately a Failure Report was submitted by Conciliation Officer dated 25.02.1998 to the appropriate Labour Court or Industrial Tribunal within a period of three months from the date of receiving the copy of the said order. The petition is allowed. Rule made absolute. The office is directed to send immediately the writ of this order to Respondent No.1.

(H.K. RATHOD, J.)
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